**STATE OF MICHIGAN**

**IN THE MICHIGAN SUPREME COURT**

**ON APPEAL FROM THE COURT OF APPEALS**
**THE HONORABLE PATRICK M. METER, THE HONORABLE KAREN M. FORT-HOOD, AND THE HONORABLE BILL SCHUETTE, PRESIDING**

**THE GREATER BIBLE WAY TEMPLE OF JACKSON**, a Michigan ecclesiastical Corporation,

Plaintiff-Appellee,

v

**CITY OF JACKSON, JACKSON PLANNING COMMISSION, and JACKSON CITY COUNCIL,**

Defendants-Appellants.

/

Supreme Court No.130196

Court of Appeals No. 255966

Trial Court No. 01-003614-AS

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**PLAINTIFF'S/APPELLEE'S BRIEF IN RESPONSE TO DEFENDANTS'/APPELLANTS' BRIEF ON APPEAL**

**ORAL ARGUMENT REQUESTED**

**Respectfully submitted,**

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Dated August 14, 2006

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## STATEMENT OF BASIS OF JURISDICTION

Plaintiff-Appellee accepts the Defendants-Appellants' Statement of Basis of Jurisdiction as being correct.

## COUNTER STATEMENT OF QUESTIONS INVOLVED

I. **DID PLAINTIFF-APPELLEE, GREATER BIBLE WAY TEMPLE OF JACKSON'S FAILURE TO EXPRESSLY STATE IN ITS COMPLAINT THAT IT WOULD SEEK ATTORNEY FEES AND COSTS IF IT PREVAILED ON THE MERITS PRECLUDE THE RECOVERY OF THOSE ATTORNEY FEES IN MICHIGAN, A NOTICE PLEADING STATE, WHEN THE FEDERAL STATUTE UPON WHICH ITS COMPLAINT WAS FILED EXPRESSLY PROVIDES FOR THE AWARD OF ATTORNEY FEES TO THE PREVAILING PARTY, AND PLAINTIFF-APPELLEE WAS IN FACT THE PREVAILING PARTY?**

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|---|---|
| Plaintiff-Appellee's Answer: | No. |
| Defendants-Appellants' Answer: | Yes. |
| Trial Court's Answer: | No. |
| Court of Appeals Answer: | No. |
| This Court's Answer Should be: | No. |

II. **DID THE TRIAL COURT ABUSE ITS DISCRETION BY AWARDING ATTORNEY FEES TO GREATER BIBLE AS THE PREVAILING PARTY?**

| | |
|---|---|
| Plaintiff-Appellee's Answer: | No. |
| Defendant-Appellants' Answer | Yes. |
| Trial Court's Answer: | No. |
| Court of Appeals Answer: | No. |
| This Court's Answer Should be: | No. |

## COUNTER-STATEMENT OF FACTS

The Defendants-Appellants, City of Jackson, Jackson Planning Commission and Jackson City Council ("City of Jackson"), appealed the Court of Appeals' published decision affirming the trial court's decision to award attorney fees to Plaintiff-Appellee, the Greater Bible Way Temple of Jackson ("Greater Bible"), as the prevailing party in a complaint for a violation of the Religious Land Use and Institutionalized Persons Act, 42 USC 2000 *et seq.* ("RLUIPA"). A statement of additional facts concerning this matter is contained in Greater Bible's Brief in Opposition of Defendants-Appellants' Brief on Appeal, Supreme Court No. 130194, and those facts are incorporated herein by reference.

This case concerns the zoning ordinances of the City of Jackson and its denial of Greater Bible's rezoning request. Greater Bible filed a two-count complaint against the City of Jackson. Count I was for appellate review of the City of Jackson's denial of its rezoning request.[1] Count II was a claim under RLUIPA.[2] The Honorable Alexander C. Perlos ordered the parties to submit counter motions for summary disposition on Count I and ordered that Count II be addressed at a later date if necessary.[3] In an Order dated August 2, 2002, Judge Perlos ruled on Count I and affirmed the City's denial of Greater Bible's rezoning application.[4]

Judge Perlos retired from the bench in January, 2003. The case was then reassigned to the Honorable Chad C. Schmucker.[5]

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[1] Appellants' Appendix, 14a.
[2] Appellants' Appendix,18a.
[3] Appellants' Appendix, 2a.
[4] Appellants' Appendix, 49a-51a.
[5] Appellants' Appendix, 3a.

The City of Jackson moved for summary disposition on Count II claiming that RLUIPA did not apply because the City of Jackson had not made an "individualized assessment" in denying the Church's request for rezoning.[6] The City of Jackson further argued that Greater Bible did not suffer a substantial burden and, if Greater Bible did, the City of Jackson had compelling governmental interests in imposing that burden on Greater Bible.[7]

Greater Bible filed its own Motion for Summary Disposition arguing that RLUIPA did apply, that the City of Jackson substantially burdened Greater Bible's religious exercise, and that the City lacked compelling governmental interests in burdening Greater Bible's religious exercise.[8]

Oral argument was heard by the Honorable Chad C. Schmucker on January 16, 2003. Following arguments, the Court ordered the parties to submit supplemental briefs on the issues of individualized assessments and whether the City of Jackson had presented compelling governmental interests in burdening Greater Bible.[9]

On February 25, 2003, the trial judge issued its ruling on the cross motions for summary disposition.[10] The trial judge denied the City of Jackson's Motion for Summary Disposition in its entirety.[11] Greater Bible's Motion for Summary Disposition was granted in part.[12] In doing so, the Court ruled that the City of Jackson had performed an individualized assessment in its denial

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[6] Appellants' Appendix, 52a-86a.
[7] Appellants' Appendix, 52a-86a.
[8] Appellants' Appendix, 87a-153a.
[9] Appellants' Appendix 153a1-194a.
[10] Appellants' Appendix, 378a-382a.
[11] Appellants' Appendix, 378a-382a.
[12] Appellants' Appendix, 378a-382a.

of the Church's rezoning request and RLUIPA did apply. The Court further ruled Greater Bible had suffered a substantial burden to its free exercise of religion.[13] The Court noted:

> The Greater Bible Way Temple of Jackson is not a newcomer to this neighborhood. They have made a substantial investment in the area many years. The City is putting the Church in either a position of relocating its entire operation if they want apartments adjacent to the Church or having apartments at a different location. Both of these choices impose a substantial burden on the Church.[14]

The Court ordered a trial on the issues of whether the City of Jackson had compelling governmental interests and whether it had taken the least restrictive means in furthering those interests.[15] Trial on these limited issues was conducted on July 14 and 15, 2003.

At the conclusion of trial, the Court ruled that the City of Jackson violated RLUIPA, specifically stating:

> But I do not find a, uh, compelling State interest has been estab - - compelling governmental interest has been established by the City. I find a violation of RLUIPA, and I am finding for the plaintiff in this case.[16]

On July 18, 2003, Greater Bible submitted a Notice of Entry of Order pursuant to MCR 2.602(B)(3) which was objected to on July 22, 2003. Notwithstanding the fact that the City of Jackson objected to the proposed Order, the Court signed the Final Order on July 29, 2003.[17] On August 8, 2003, the City of Jackson filed its Motion for Relief from Judgment dated July 29, 2003.[18] On August 21, 2003, a hearing on the City of Jackson's motion was held.[19] The Court

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[13] Appellants' Appendix, 380a.
[14] Appellants' Appendix, 380a-381a.
[15] Appellants' Appendix, 382a.
[16] Appellants' Appendix, 812a.
[17] Appellants' Appendix, 817a-820a.
[18] Appellee's Appendix, 1b-29b.
[19] Appellants' Appendix, 828a-853a.

ruled that portions of the July 29, 2003, Order should be revised. On August 26, 2003, Greater Bible submitted another Final Order under MCR 2.602 (B)(3). The Court signed the proposed Order on September 3, 2003.[20] The Final Order stated:

> IT IS HEREBY FURTHER ORDERED that the Defendants have imposed or implemented a land use regulation in a manner that imposes a substantial burden on the religious exercise of Plaintiff;
>
> IT IS HEREBY FURTHER ORDERED that the Defendants have failed to demonstrate that the imposition of a substantial burden on the religious exercise of Plaintiff was in furtherance of a compelling governmental interest;
>
> IT IS HEREBY FURTHER ORDERED that Defendants have violated the Religious Land Use and Institutionalized Persons Act (RLUIPA), 442 USC Section 2000 cc et seq. for those reasons stated on the record; . . .[21]

In addition, the Final Order dated September 3, 2003, provided:

> IT IS HEREBY FURTHER ORDERED that Plaintiff is the prevailing party. . .[22]

On September 8, 2003, Greater Bible filed its Motion for Costs and Attorney Fees as the prevailing party on the RULIPA claim.[23]

On October 30, 2003, a hearing was held on Greater Bible's Motion for Attorney Fees and Costs.[24] Greater Bible argued it was entitled to attorney fees and costs based upon the fact that it was the prevailing party under RLUIPA. The City of Jackson argued that Greater Bible's claim for attorney fees and costs was waived because it was not expressly set forth in the complaint. The City of Jackson argued that FR Civ P 9(g) provided that attorney fees are items

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[20] Appellants' Appendix, 853a1-853a3.
[21] Appellants' Appendix, 853a2.
[22] Appellants' Appendix, 853a3.
[23] Appellee's Appendix, 32b-46b.

of special damages and FR Civ P 9(g) required special damages to be specifically pled. In considering the matter, the trial court observed:

> . . . the statute is not very complex and it's pretty clear from the statute that it's - - that a prevailing party is entitled to attorney fees.[25]

On May 19, 2004, the Court issued its Opinion and Order approving the bill in total for the amount of $29,780.59 and $1,234.26 in costs.[26] The judge ruled:

> In this case, the result achieved was exactly the result that the plaintiff petitioned for, a finding that RLUIPA had been violated. As such, plaintiff's attorney was entirely successful on the RLUIPA count. I find the number of hours spent on this litigation reasonable especially concerning the complexity of the case, the extensive efforts to reach a compromise resolution with the City of Jackson and the vigorous manner in which the case was ultimately contested by the City of Jackson.[27]

The Court further noted that it was "reluctant to call Defendant's objection a brief there is no citation to any cases or legal authorities and much of it is a groundless diatribe against plaintiff's attorney."[28]

The Court of Appeals issued its published opinion on November 10, 2005, affirming the trial court on all issues including the award of attorney fees. See *Greater Bible Way Temple of Jackson v City of Jackson*, 268 Mich App 673; 708 NW2d 756 (2005).[29] The City of Jackson has correctly cited the portion of the Court of Appeals' Opinion that relates to the award of attorney fees in its brief, and for the sake of brevity, it will not be repeated here.

[24] Appellants' Appendix, 867a-886a.
[25] Appellants' Appendix, 882a-883a.
[26] Appellants' Appendix, 931a-936a.
[27] Appellants' Appendix, 935a.
[28] Appellants' Appendix, 932a.
[29] Appellants' Appendix, 940a-947a.

The City of Jackson timely filed separate Applications for Leave to Appeal to this Court, which were granted on May 4, 2006.

## STANDARDS OF REVIEW

A lower court's decision on whether to award attorney fees is reviewed under an "abuse of discretion" standard. *H.A. Smith Lumber & Hardware Co., v Decina, 258* Mich App 419, 429; 670 NW2d 729 (2003) and *Schoensee v Bennett*, 228 Mich App 305, 314; 577 NW2d 915 (1988). An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion. *Dacon v Transue,* 441 Mich 315, 329; 490 NW2d 369 (1992).

## ARGUMENT

**I. PLAINTIFF-APPELLEE'S FAILURE TO EXPRESSLY STATE IN ITS COMPLAINT THAT IT WOULD SEEK ATTORNEY FEES IF IT PREVAILED ON THE MERITS DID NOT PRECLUDE RECOVERY OF THOSE ATTORNEY FEES AS THE PREVAILING PARTY, AS MICHIGAN IS A NOTICE PLEADING STATE AND THE FEDERAL STATUTE UPON WHICH PLAINTIFF-APPELLEE'S COMPLAINT WAS FILED EXPRESSLY PROVIDES FOR THE AWARD OF ATTORNEY FEES TO THE PREVAILING PARTY.**

Greater Bible filed its complaint against Defendants under RLUIPA. RLUIPA specifically allows for the recovery of attorney fees if a religious institution is successful in its claim. 42 USC 1988 provides, in pertinent part:

> (b) Attorney's Fees
>
> > In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, the Religious Freedom Restoration Act of 1993, the Religious Land Use and Institutionalized Persons Act of 2000, title VI of the Civil Rights Act of 1964, or section 13981 of this title, ***the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs***, except that in any action brought against a judicial offer for an act or omission taken in such officer's judicial capacity such offer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction. (Emphasis added.)

As Greater Bible pled RLUIPA in its Complaint, the City of Jackson was on notice of RLUIPA's statutory provisions. RLUIPA expressly allows for an award of attorney fees to the prevailing party and the City of Jackson was aware of this claim.

The City of Jackson argues that because Greater Bible failed to specifically request attorney fees in its prayer for relief, it waived its right to recover those fees and costs as a prevailing party. However, in cases where the applicable statute provides for an award of attorney fees, a prayer for relief containing a specific request for attorney fees is not required.

In the case of *Trepel v Roadway Express Inc*, unpublished opinion of the 6th Circuit, decided April 21, 2003 (Docket 01-3563) (copy attached as Attachment 1), the court held that because the plaintiff filed suit under the Household Goods Transportation Act, 49 USC 11711(d) (1993) (repealed 1994), which specifically provided for an award of attorney fees, a separate request for attorney fees was not necessary. Similarly, in *Ams United for Separation of Church & State v Sch Dist of Grand Rapids*, 835 F2d 627, 631 (CA 6, 1976), the Appellate Court remanded an action to the District Court for a determination of attorney fees based upon 42 USC 1983 even though 42 USC 1983 was not specifically pled in the complaint, nor were attorney fees specifically requested by the Plaintiff. Here, although Greater Bible did not repeat the statutory provision for attorney fees in its Complaint, the Complaint was filed under, and directed the City of Jackson to, the provisions of RLUIPA. Therefore, the City was on notice that Greater Bible would be seeking attorney fees in the event it prevailed on the merits.

It is interesting to note that the City of Jackson cites *In re American Casualty Co*, 851 F2d 794 (CA 6, 1988), to stand for the proposition that "Many Federal Courts have held that a party may waive attorney fees if it does not specifically make a request for attorney fees in its pleadings..".[30] In that case, the United States Court of Appeals for the Sixth Circuit ruled that a party was not entitled to an award of attorney fees based upon local rules of the United States District Court for the Eastern District of Michigan as its motion for attorney fees was not timely filed. Rule 17(n), Local Rules of the United States District Court for the Eastern District of Michigan provides:

> Except as otherwise provided by statute or by order of the court, an application for attorneys fees by a prevailing party together with a supporting memorandum shall be filed

[30] City of Jackson's Brief on Appeal, 13.

> within thirty days after the entry of judgment. Failure to file the application within the time specified shall be considered a waiver of the right to attorney fees.

Specifically, in *In Re American Casualty*, an award of attorney fees was denied as the necessary motion was not filed within 30 days after entry of final judgment pursuant to a local rule.[31] No such rule exists in this case, and even if it did, Greater Bible filed its motion for attorney fees and costs on September 8, 2003, merely five days after entry of the final order.

Contrary to the City of Jackson's assertion, the law does not require a claim for statutory attorney fees to be expressly pled in a complaint. In Michigan, MCR 2.601 controls and authorizes the Court to grant any relief consistent with the facts of that particular case. MCR 2.601 provides in pertinent part:

**RULE 2.601 JUDGMENTS**

(A) Relief Available.

> Except as provided in subrule (B), every final judgment may grant the relief to which the party whose favor it is rendered is entitled, ***even if the party has not demanded that relief in his or her pleadings.*** [Emphasis added].

In *City of Jackson v Thompson McCully,* 239 Mich App 482; 608 NW2d 531 (2000), the trial court granted Plaintiff relief on a theory of law that was not in Plaintiff's complaint. The Court of Appeals affirmed the trial court's ruling pursuant to MCR 2.601(A), stating that "Under the court rules, a final judgment may grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded that relief in his or her pleadings."

Likewise, the City of Jackson correctly notes that in *Alcatel USA, Inc. v Cisco Systems, Inc.*, 239 F Supp 2d 660 (ED TX, 2002), the court found that, even though plaintiff did not

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[31] *In re American Casualty Co*, at 797-798.

specifically plead a request for statutory damages, costs and attorney's fees in its pleadings, an award of attorney fees were inherently permitted under the plain language of the Texas Theft Liability Act and the intent to seek such an award was expressly manifested in the parties' proposed joint final pretrial order. *Id.* In this case, attorney fees were requested throughout the proceedings in every motion or response filed by Greater Bible's attorney. Such requests likewise put the City of Jackson on notice of that it would be called upon to pay Greater Bible's attorney fees if it was found to have violated RLUIPA. Like *Alcatel*, such an award was "manifested" throughout the pleadings in this matter.

Additionally, in *Allstate v Keillor*, 442 Mich 56; 499 NW2d 743 (1993), this Court held that in awarding relief to the parties, a trial court is not limited to awarding the relief requested by Plaintiff. Rather, under MCR 2.601, the court could award relief to any party, even if that relief was not specifically requested in the pleadings.

Moreover, MCL 600.2311, states that a court has the power to amend the pleadings to conform with its ruling, even if the ruling takes place after the judgment has been entered:

> After judgment rendered in any cause, any defect or imperfections in matter or of form, contained in the record, pleadings, process, entries, returns, or other proceedings, may be rectified and amended by the court, in affirmance of the judgment, so that such judgment shall not be reversed or annulled; and any variation in the record, from any process, pleading or proceeding had in such cause, shall be reformed and amended according to such original process, pleading or proceeding.

Interpreting MCL 600.2311, this Court, in *Tudryck v Mutch,* 320 Mich 99; 30 NW2d 518 (1948), held that courts may permit amendments to pleading or proceedings any time including after judgment.

Here, MCR 2.601(A) gave the court below discretion to grant "all relief to which the prevailing party is entitled." Greater Bible was determined to be the prevailing party. Moreover, Plaintiff is entitled, under RLUIPA, to its attorney fees and costs. For these reasons alone, the trial court was authorized to grant Greater Bible's attorney fees.

The City of Jackson further argues that, because there was no specific request for attorney fees in Greater Bible's complaint, they could not be awarded. If such were truly the case, a prevailing party would never be able to recover its attorney fees under mediation rules, the offer of judgment rule, or the prevailing party rule, unless that party specifically requested them in its complaint. The City of Jackson's argument is without merit and the Court of Appeals' decision should be affirmed.

The City of Jackson argues that FR Civ P 9(g) is controlling and that special damages in federal court actions need to be specifically plead. While the City correctly quotes the text of FR Civ P 9(g), it fails to recognize that the limitations set forth in that federal rule do not apply to this particular case. The City cites *Atchison Casting Corp v DOFASCO*, unpublished opinion of the District Court of Kansas, decided October 25, 1995[32] to stand for the proposition that a party's failure to request attorneys fees in their complaint barred them from raising the issue at a later time. The City of Jackson goes on to allege that FR Civ P 9(g) characterizes attorneys fees and costs as items of "special damage" and as such, they should be specifically claimed. *Atchison*, *supra*, was a contract action in which the Plaintiff filed suit alleging two breaches of contract and a fraud claim. The court in *Atchison* ruled:

> The cases citing Rule 54(c) have a common thread: fees may be awarded where the parties to the action knew or should have known an attorneys' fee award could issue.

[32] Case attachment 2.

> Thorstenn, 883 F2d at 218 (noting that the complaint clearly asserted statutory claims based on violations of a federal statute for which 42 USC § 1983 provided a remedy, triggering attorneys' fees under § 1988. Engel, 732 F2d at 1240-41 (stressing that the contract in dispute explicitly authorized a fee award); see Klarman, 503 F2d at 36- 37 (denying attorneys' fees even though Rule 54(c) authorizes an award because the contract at issue did not provide for an award. Here, Atchison should not have been expected to know that attorneys' fees might be awarded in this action because, as the conflict of laws analysis below illustrates, no Kansas case law exists to suggest that Canadian law would apply and authorize a fee award.
>
> *Atchison, supra* at 14-15.

Attorney fees are only considered special damages when a party could not reasonably know they could be awarded. *Atchison* actually stands for the proposition that FR Civ P 54(c) applies in cases, like the present case, where there is a **statutory basis** for an award of attorneys fees even if a request for those fees is not specifically pled. The *Atchison* court also identified other cases in which a party "knew or should have known an attorneys' fee award could issue," for instance, where a contract which was the basis of the suit contained an attorney fee recovery provision. *Id.* It is similarly clear in the case at bar, that the City of Jackson knew or should have known that attorney fees could be awarded. Greater Bible's suit was filed under RLUIPA, and pursuant to the language of 42 USC 1988, the prevailing party is entitled to reasonable attorneys fees as part of the costs. Therefore, the award of attorney fees to Greater Bible was justified and the Court of Appeals' decision should be affirmed.

## II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING GREATER BIBLE ATTORNEY FEES IN THIS MATTER AS THE CITY WAS ON NOTICE THAT THOSE FEES COULD BE AWARDED AND THE CITY OF JACKSON WAS NOT PREJUDICED BY THAT AWARD.

Finally, the City of Jackson claims that Greater Bible's failure to include a claim for attorneys fees in its complaint results in severe prejudice to the City. The City of Jackson cites no case law to support this position, and as the Court of Appeals correctly stated: "a bald assertion without supporting authority precludes examination of [an] issue. *Greater Bible Way Temple v City of Jackson*, 268 Mich App 673, 689 (Mich Ct App. 2005), citing *Impullitti v Impullitti*, 163 Mich. App. 507, 512; 415 N.W.2d 261 (1987).

Not surprisingly, the City of Jackson has since abandoned its cite to *US v Marin* 651 F2d 24 (1981) which was contained in the City's Application for Leave to Appeal as authority on this issue. In *Marin*, defendants contended that an award of damages against them was in error because no claim for damages was ever made. The court held:

> First, it is true that the complaint did not contain an explicit prayer for damages. What was requested was a declaration that the leases were void or that the leasehold interest of Marin and Caribbean were subordinate to the interest of the United States. There was, however a prayer for "such other and further relief as is equitable in the premises"; furthermore, FED. R. Civ. P. 54 (c) provides that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." Fed. R. Civ. P. 54(c) "This rule has been liberally construed, leaving no question that it is the court's duty to grant whatever relief is appropriate in the case on the facts proved." Robinson v. Lorillard Corp., 444 F2d 791, 802-903 (4th Cir.), cert. dismissed, 404 U.S. 1006, 92 S.Ct. 573, 30 L.Ed. 2d 655 (1971). See Columbia Nastri & Carta Carbone v. Columbia Ribbon & Carbon Manufacturing Co., 367 F2d 308, 312 (2d Cir. 1966).

The court indicated that the facts established at trial supported an award of damages, and the district court had properly determined that an award of damages was appropriate. The court went on to say:

> To be sure, there may be cases where the failure to ask for particular relief so prejudiced the opposing party that it would be unjust to grant such relief. See Rental Development Corporation of America v. Lavery, 304 F2d 839, 842 (9th Cir. 1962). This is not such case. The damages award stemmed directly from the facts proved at trial concerning the validity o the leases. See Robinson v. Lorillard, 444 F2d 791. Questions of defendants' good faith and credibility were inherent in the issues presented to the court. Moreover, Marin and Caribbean had ample notice in the course of the proceedings that the receiver claimed a right to recover the differential in the lease between them, and had an opportunity to contest that claim.

Similarly, the case at bar is not a case where the failure to ask for particular relief so prejudiced the opposing party that it would be unjust to grant such relief. Greater Bible was clearly successful under its RLUIPA claim. As attorney fees are a proper award in RLUIPA, the City of Jackson had ample notice in the course of the proceedings that attorneys fees could be awarded. In addition, it had every opportunity to defend, and did defend the RLUIPA claim, but it was unsuccessful.

Under these circumstances, granting an award of attorney fees did not result in unfair prejudice being imposed on the City of Jackson. The Court of Appeals was correct in affirming the trial court's decision to award them.

## SUMMARY AND RELIEF REQUESTED

Greater Bible's failure to expressly ask for attorney fees and costs in its complaint does **not** constitute a waiver of the right to attorney fees. In addition, the award of attorney fees did not unfairly prejudice the City of Jackson. FR Civ P 54(c) specifically states that "every judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings." In addition, FR Civ P 9(g) does not apply to this case because the attorneys fees claimed are not "special damages" under that rule as they are specifically provided for by RLUIPA. MCR 2.601(A), like FR Civ P 54(c), does not limit the relief that may be granted to that which is demanded in a complaint. The trial court was correct in its award of attorney fees and the Court of Appeals was correct in affirming the trial court's decision.

**WHEREFORE**, for the foregoing reasons, Plaintiff-Appellee requests that this Honorable Court Affirm the Court of Appeals' decision in its entirety.

Respectfully submitted by:

HUBBARD, FOX, THOMAS
WHITE & BENGTSON, P.C.

Dated: August 11, 2006

By: _____
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